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CATHERINE KOO & ORS v. KOO LIN SHEN & ORS

HIGH COURT MALAYA, SHAH ALAM
AZIMAH OMAR J
[ORIGINATING SUMMONS NO: 24-576-05-2015]
20 OCTOBER 2017

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CIVIL PROCEDURE: *Joinder of parties – Rules of Court 2012, O. 15 r. 6(2)(a) – Application to extricate or remove defendants from proceeding and order that had been obtained – Whether provision of O. 15 r. 6(2)(a) promote erasure of records and distortion of historical integrity of proceedings – Whether application was retrospective in effect – Whether order obtained pursuant to proceedings determined upon merits – Whether court duly issued final order – Whether court functus officio – Whether application misconceived and without merits, baseless and abuse of process of court process*

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This case essentially revolved around the mental capacity of one Koo Lin Shen ('KLS'), the original defendant, in managing his affairs, business and companies. Following medical reports by Dr Subash Kumar Pillai in 2015 finding KLS was unable to make informed decision in respect of his estate, the plaintiffs, the children of KLS, sought an order to declare their father was mentally disordered and thus incapable of managing himself and his affairs

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and upon such declaration, a committee of the person/his estate be appointed pursuant to s. 51 of the Mental Health Act 2001 ('MHA') ('encl. 1'). When the plaintiffs commenced the proceedings, the second to 11th defendants, who claimed that they would be affected by such order, intervened into the proceedings and were made defendants. However, before the court granted

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a declaration regarding KLS's mental condition, the parties informed the court that all parties, particularly the second to 11th defendants had reached a global settlement ('GSA') and consequently entered and recorded a consent judgment. Following the recording of the consent judgment, the second to 11th defendants proceeded to inform the court that they had no objections

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against the plaintiffs' application in encl. 1. Upon considering the joint report furnished to the court, which was found to be sufficient and comprehensive to determine KLS's mental condition, the court, on 15 October 2015, declared that KLS was a mentally disordered person who was unable to manage himself and/or his affairs. With the granting of the declaration, the

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consequential order was the appointment of a committee to manage KLS's affairs and matters. However, after more than a year of the granting of the order, the plaintiffs sought an order to extricate or remove the second to 11th defendants from the proceedings as well as orders that had been obtained on 15 October 2015 ('encl. 71') relying on O. 15 r. 6(2)(a) of the Rules of Court 2012 ('ROC'). The plaintiffs' application in encl. 71 was intended to have

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retrospective effect in which the plaintiffs intended to remove the involvement of the parties' presence in the intitulement from the very beginning as though the second to 11th defendants were never part of the

proceedings. The second to 11th defendants took the stance that they had no objections to the application so long that there would be no admission on the part on the contents of encl. 71 and should be no order as to costs against them.

Held (dismissing plaintiffs' application in encl. 71):

(1) The declaration granted regarding KLS's mental condition was a matter that was purely substantive in encl. 1, which deemed the proceedings of encl. 1 had been fully disposed of, determined upon merits and ended. There was no longer any live proceedings for the plaintiffs' return before the court for an order to extricate, delete or remove the names of the second to 11th defendants from the proceeding. The court had duly issued a final order with consequential directions in respect of KLS's mental state or condition and was thus *functus officio*. Hence, the filing of encl. 71 after some 20 months from the declaratory order was obviously without merits, baseless and constituted an abuse of process of the court. (paras 44-46)

(2) The application or operation of O. 15 r. 6(2)(a) of the ROC was plainly misconceived. Although the provision may allow the addition or subtraction of parties supposedly at any time of the proceedings, clearly the provision would never promote erasure of records and distortion of historical integrity of proceedings. The operability of the provision only extends to further prospective determinations or consequential matters and certainly does not cover retrospective erasure of involvements and records. The second to 11th defendants were crucial and inseparable from the determination of the proceedings. Order 15 r. 6(2)(a) of the ROC certainly could not be relied upon by the plaintiffs. (paras 47 & 49-51)

(3) The plaintiffs' attempt to rely on ss. 63, 65 and 74 of the MHA was erroneous and ill-conceived. The provision allows for further and consequential orders from or stemming from an earlier order determining the mental state or condition of a person. However, none of the provisions allows a retrospective order to alter, delete, erase and distort earlier records and direction or orders made by the court. What the plaintiffs intended to erase, manipulate and unduly distort here was the undeniable saliency and involvement of the second to 11th defendants in the proceedings before KLS was determined to be mentally disordered. Clearly, what was applied for the plaintiffs was the exact and direct opposite of what the provisions provided for. (paras 67, 59 & 60)

(4) Upon the declaration in the order regarding KLS's mental state, all parties, inclusive of the plaintiffs and the second to 11th defendants, were undeniably parties involved and affected from the declaration. Even more so, when the consequence of the declaration entailed that all parties stood to benefit from the order. Further, the plaintiffs never

furnished any real and substantive justification to the undue erasure and distortion of history and court records regarding the involvement of the second to 11th defendants. All that was furnished to the court was that there were no objections from the second to 11th defendants. Notwithstanding the notion that the second to 11th defendants' interest had ceased to exist, the diminishment of interest did not erase or diminish the fact of involvement in a proceeding. (paras 63, 65 & 66)

(5) The historical issue raised had already been fully disposed and determined with the integral involvement of the second to 11th defendants. With the advent of GSA and the recording of consent judgment, the historical issue was already deemed settled and determined. The plaintiffs could not now contradict its own stance and attempt to abuse the historical issue to unduly erase the second to 11th defendants' involvement in the proceedings. The plaintiffs' application was clearly a blatant abuse of the process of the court. (paras 68, 69 & 71)

Case(s) referred to:

Chew Hon Keong v. Betterproducts Industries Sdn Bhd & Ors [2013] 7 MLJ 196 ***(refd)***
Hock Hua Bank Bhd v. Sahari Murid [1980] 1 LNS 92 FC ***(refd)***
Hong Leong Bank Bhd v. Staghorn Sdn Bhd & Other Appeals [2008] 2 CLJ 121 FC ***(refd)***
Ling Towi Sing & Ors v. Dato' Ng Kong Yeam; Kay Swee Pin & Anor (Proposed Interveners) [2017] 1 CLJ 221 HC ***(dist)***
Nite Beauty Industries Sdn Bhd & Anor v. Bayer (Malaysia) Sdn Bhd [2000] 6 CLJ 151 HC ***(refd)***
Singh v. Atombrook [1989] 1 WLR 810 ***(refd)***

Legislation referred to:

Mental Health Act 2001, ss. 2, 51, 52, 53, 54, 55, 56, 57, 58, 59, 62, 63, 64, 65, 73, 74
Rules of Court 2012, O. 15 r. 6(2)(a), (b), O. 20 r. 5(1)

For the plaintiff - KL Pang & Shelby Chin; M/s Cheah Teh & Su
For the 2nd to 5th defendants - Aric Wong & Teh Su Jin; M/s Lee Hishamuddin Allen & Gledhill
For the 6th and 7th defendants - V Varuna; M/s Kumar & Partnership
For the 8th to 11th defendants - V Sivaparamjoty; M/s V Siva & Partners

Reported by S Barathi

JUDGMENT

Azimah Omar J:

Introduction

[1] This case essentially revolves around the mental capacity of a man by the name of Koo Lin Shen (the original defendant) ("KLS") in managing his affairs, business and companies.

[2] The plaintiffs (Catherine Khoo, Edward Hao-Mang Koo and Alexander Hoa-Nan Koo) are Koo Lin Shen's children. The plaintiffs had moved this court under ss. 2, 51 to 59, 62, 63 and 64 of the Mental Health Act 2001 (MHA 2001) seeking *inter alia* for the following orders:

(i) An inquiry be held to determine whether the defendant is mentally disordered and is incapable of managing himself and his affairs due to such mental disorder;

(ii) The defendant is mentally disordered and due to his mental disorder, incapable of managing himself and/or his affairs or otherwise;

(iii) In the event the defendant is found to be mentally disordered and incapable of managing himself and/or his affairs due to his mental disorder:

(a) A committee of the defendant and/or the estate of the defendant comprising of the plaintiffs ("committee") be appointed on the following terms:

(i) The Committee is not entitled to any remuneration, unless otherwise ordered by the Court;

(ii) The Committee is not required to give any security, unless otherwise ordered by the Court;

(iii) The Committee be authorised to conduct the legal proceedings (including making a claim, defending, making a counterclaim, intervening in any proceedings, appearing in any proceedings, appealing against any decisions and/or opposing any appeals against any decisions) as set out in Annexure A in herein in the name of the Defendant and/or on his behalf;

(iv) The Committee shall have all powers for the management of the estate of the Defendant;

(v) The Committee shall be entitled to exercise all voting rights of the Defendant in relation to the shares of private limited companies held by the Defendant as set out in Annexure B herein;

[3] The plaintiffs had initially filed their originating summons (encl. 1) dated 13 May 2015 on the basis of an *ex parte* application wherein together with the *ex parte* originating summons, the plaintiffs had filed a certificate of urgency applying for an early date of hearing of encl. 1 citing Koo Lin Shen's continuous deteriorating mental condition.

[4] In view of the certificate of urgency filed, this court had fixed encl. 1 for hearing on 26 May 2015.

[5] On 26 May 2015 this court had granted prayer 1 of the encl. 1 that an inquiry be held to determine the state of Koo Lin Shen's mental capacity. This court had also ordered that Koo Li Shen be examined by an independent

psychiatrist other than Dr Subash Kumar Pillai (Dr Subash), an Associate Professor and Consultant Psychiatrist from the University of Malaya who was attending to Koo Lin Shen's health issues since 2013. The independent psychiatrist intended to be appointed must also be from a different hospital other than the University of Malaya Hospital. The matter was then fixed for mention on 16 June 2015 pending examination by the independent psychiatrist on Koo Li Shen.

[6] However, two months later, on the ground that they have legal and legitimate interest in the outcome of the plaintiffs' proceedings, being counter parties to several legal proceedings with KLS himself, the plaintiffs and companies associated with KLS as well as the second to the 11th defendants had filed three separate applications (encls. 29, 31 and encl. 37) to intervene the proceedings. In their applications to intervene the proceedings, the proposed interveners have also applied that this court to determine the time or period of the onset of the decline in KLS's mental state. The proposed interveners also sought for an order that their consultant psychiatrist in NeuroBehavioral Medicine from Penang Adventist Hospital, Dr Prem Kumar Chandrasekaran (Dr Prem Kumar) to review and provide his specialist's views on KLS based on the various medical reports, any relevant documents including MRA/MRIs that may be available or which have been produced by the plaintiffs.

[7] The proposed interveners also sought for an order that based on Dr Prem Kumar's advice, KLS be directed to attend before Dr Prem Kumar for examination and evaluation to determine his mental state and the onset of his condition.

[8] Subsequently the second to the 11th defendants (Charles Koo Ho Tung, Lydia Koo Chee Yung & Angela Koo Chi-Fong suing on behalf of herself and the beneficiaries of the estate of Koo Ling Ching, deceased), HSBC International Trustee Limited (Company No: 1168 (administrator of the estate of Koo Ling Ching), Malaya Acid Works Sdn Bhd (Company No: 3202-D), Malaya Acid Works (Alum) Sdn Bhd (Company No: 5734-H), Koo Ho-Tung, Charles (UK Passport No.7612278793) Koo Chi-Fong, Angela (UK Passport No: 511077870), Koo Chee Yung, Lydia (UK Passport No: 510909424) and Koo Ho Liang, Henry (UK Passport No: 7612751284) were made parties to this originating summons by the order of this court dated 30 July 2015 and 13 August 2015 respectively.

[9] With these orders, KLS then became the first defendant while the rest of the interveners were made the second to the 11th defendants.

[10] This court must also mention here that in view of avoiding the inconvenience to have KLS examined by multiple psychiatrists (first, by the independent psychiatrist appointed by the plaintiffs and second, a psychiatrist appointed by the second to the 11th defendants), all the parties had later agreed that a joint examination is to be conducted on KLS by two

psychiatrists namely, Dr Rajbans Singh Mukhtiar Singh of Pantai Hospital Kuala Lumpur ("Dr Rajbans") and Dr Prem Kumar. The joint examination on KLS was conducted on 29 August 2015 at 11am at Dr Rajbans's clinic at Pantai Hospital Kuala Lumpur. To that, a joint report dated 17 September 2015 ("joint report") was prepared by Dr Rajbans and Dr Prem Kumar.

[11] However, before the substantive application (encl. 1) is heard, various parties including the plaintiffs and the second to the 11th defendants had entered into a global settlement agreement on 5 October 2015 ("GSA").

[12] When encl. 1 (for the remaining prayers) was called for hearing on 15 October 2015, counsel for the plaintiffs, Ms Shelby Chin had informed this court that the parties have reached a global settlement in respect of all the related matters and they wish to record a consent order as per the draft consent order which was signed by all the parties.

[13] The consent order entered by the plaintiffs and the second to the 11th defendants reads as follows:

> UPON THE APPLICATION of the 1st, 2nd and 3rd Plaintiffs in the above-captioned matter AND AFTER HEARING Shelby Chin, solicitors for the Plaintiffs, Rosli Dahlan, Yee Mei Ken, Ho Ai Ting and Teh Soo Jin, solicitors for the 2nd to 5th Defendants, V. Varunnath, solicitors for the 6th and 7th Defendants and Dato' V. Sivaparanjothi, solicitors for the 8th to Defendants AND AFTER READING the Notice of Application dates 8-10-2015 (Enclosure 56), the Affidavit affirmed by Catherine Koo on 8-10-2015, the "Sijil Perakuan Segera" by Shelby Chin Pui Mun dated 8-10-2015 and the written submissions of the Plaintiffs AND AFTER HEARING the submissions by counsel IT IS BEFORE ORDERED in the presence of counsel and the 1st Defendant that:
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> 1. (i) the claims, counterclaims, third-party proceedings, complaints and/or appeals by and/or against the 1st Defendant be settled as per the terms of the Global Settlement Agreement dated 5-10-2015 ("GSA") annexed herewith as annexure "1",
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> (ii) the 5,040,000 ordinary shares of RM1.00 each in Malaya Acid Works Sdn Bhd registered in the name of the 1st Defendant be sold as per the terms of the agreed form of the Share Sale Agreement in respect of shares in Malaya Acid Works Sdn Bhd in annexure A of the GSA;
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> (iii) the 1,260,000 ordinary shares of RM1.00 each in Federal Fertilizer Co Sdn Bhd registered in the name of the 5th Defendant and the 255,000 ordinary shares of RM1.00 each in Federal Fertilizer Co Sdn Bhd registered in the name of the 2nd/8th Defendant be purchased by the 1st Defendant as per the terms of the agreed form of the Share Sale Agreement in respect of shares in Federal Fertilizer Co Sdn Bhd in annexure B of the GSA;
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> (iv) the 265,000 ordinary shares of RM1.00 each in Malaysia United Chemical Corporation Sdn Bhd registered in the name of the 5th Defendant be purchased by the 1st Defendant as per the

terms of the agreed form of the Share Sale Agreement in respect of shares in Malaysia United Chemical Corporation Sdn Bhd in annexure C of the GSA;

(v) the 18,500 ordinary shares of SGD100.00 each in the Chemical Corporation of Singapore (Private) Limited registered in the name of Regency Investment Limited, the 500 ordinary shares of SGD100.00 each in The Chemical Corporation of Singapore (Private) Limited registered in the name of the 2nd/8th Defendant and the 500 ordinary shares of SGD100.00 each in The Chemical Corporation of Singapore (Private) Limited registered in the name of the 11th Defendant be purchased by the 1st Defendant as per the terms of the agreed form of the Share Sale Agreement in respect of shares in The Chemical Corporation of Singapore (Private) Limited in annexure D of the GSA;

2. the committee of the estate of the 1st Defendant appointed by this Honourable Court be authorised to execute the following documents in the name of the 1st Defendant and on his behalf:

(i) The agreed form of the Accession Deed in annexure F of the GSA;

(ii) The agreed form of the Share Sale Agreement in respect of shares in Malaya Acid Works Sdn Bhd in annexure A of the GSA;

(iii) The agreed form of the Share Sale Agreement in respect of shares in Federal Fertilizer Co Sdn Bhd in annexure B of the GSA;

(iv) The agreed form of the Share Sale Agreement in respect of shares in Malaysia United Chemical Corporation Sdn Bhd in annexure C of the GSA;

(v) The agreed form of the Share Sale Agreement in respect of shares in The Chemical Corporation of Singapore (Private) Limited in annexure D of the GSA; and

(vi) All such instruments, conveyances, transfer forms, deeds, contracts and/or documents as may be necessary to give effect to any of the aforesaid agreements;

3. it shall be sufficient for any 2 out of the 3 members of the committee of the estate of the 1st Defendant to execute any documents in the name of and on behalf of the 1st Defendant, including but not limited to the documents in paragraphs 2(i) to 2(iv) above.

[14] Upon having the consent order being recorded, the second defendant to the 11th defendants had informed this court that they now have no objection to the plaintiffs' application.

[15] This court had then proceeded to scrutinise and evaluate the joint report. Upon due deliberation and consideration of the joint report, this court opines that the mental capacity of KLS can be determined without the need to hold an inquiry as the joint report in itself would be sufficient and adequate for this court to arrive to a decision.

[16] On the same day, ie, 15 October 2015, this court had allowed the plaintiffs' application and thereby granted order in terms in prayers 2 and 3 of encl. 1. The order granted by this court reads as follows:

> UPON THE APPLICATION of the 1st, 2nd and 3rd Plaintiffs in the above-captioned matter AND AFTER HEARING Shelby Chin, solicitors for the Plaintiffs, Rosli Dahlan, Yee Mei Ken, Ho Ai Ting and Teh Soo Jin, solicitors for the 2nd to 5th Defendants, V. Varunnath, solicitors for the 6th and 7th Defendants and Dato' V. Sivaparanjothi, solicitors for the 8th to Defendants AND AFTER READING the Originating Summons dates 13-5-2015 (Enclosure 1), the "Perakuan Segera" by Shelby Chin Pui Mun dated 13-5-2015, the Affidavit affirmed by Catherine Koo on 13-5-2015, the affidavit of service affirmed by Ahmad Zukri bin Zakaria on 18-5-2015, the affirmed by Catherine Koo on 19-5-2015, the Affidavit of Service affirmed by Catherine Koo on 19-5-2015, the Affidavit affirmed by Catherine Koo on 20-05-2015, the Affidavit affirmed by Catherine Koo on 29-6-2015, the 2nd to 5th Defendants 2015, the Affidavit affirmed by Charles Koo Ho Tung on 29-6-2015 and the written submissions of the Plaintiffs AND AFTER HEARING the submissions by counsel IT IS BEFORE ORDERED in the presence of counsel and the 1st Defendant that:
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> 1. the 1st Defendant is found to be mentally disordered and incapable of managing himself and his affairs due to his mental disorder:
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> (i) a committee of the 1st Defendant and the estate of the 1st Defendant comprising of the Plaintiffs ("Committee") be appointed on the following terms:
>
> (a) the Committee is not entitled to any remuneration, unless otherwise ordered by the Court;
>
> (b) the Committee is not required to give any security, unless otherwise ordered by the Court;
>
> (ii) the Committee be authorised to conduct the legal proceedings (including making a claim, defending, making a counterclaim, intervening in any proceedings, appearing in any proceedings, appealing against any decisions and/or opposing any appeals against any decisions) as set out in Annexure A herein in the name of the 1st Defendant and/or on his behalf;
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> (iii) the Committee shall have all powers for the management of the estate of the 1st Defendant;

A (iv) the Committee shall be entitled to exercise all voting rights of the Defendant in relation to the shares of private limited companies held by the 1st Defendant as set out in Annexure B herein; and

2. the 2nd, 3rd, 4th and 5th Defendants reserve the right to have
B an inquiry held for the purposes of determining the period during which the 1st Defendant has been mentally disordered pursuant to section 52(2) of the Mental Health Act 2001 subject to the terms of the Global Settlement Agreement dated 5-10-2015.

[17] Now, after more than a year after the order was issued by this court
C declaring that KLS no longer able to manage himself, his affairs, businesses and financial matters, to which the plaintiffs had already obtained what relief they sought for with the direct involvement of all second to 11th defendants, the plaintiffs, the progenitor of the order itself, now filed application in encl. 71, seeking for the following orders:

D (i) the 2nd, 3rd, 4th, 5th 6th 7th, 8th, 9th,10th and 11th Defendants to cease to be parties to the proceedings;

(ii) the intitulement of this action be amended by deleting the names of the 2nd, 3rd, 4th, 5th 6th 7th, 8th, 9th,10th and 11th Defendants.

[18] In other words, the plaintiffs are now taking a massive and
E retrospective leap backward and attempted to obtain an order to extricate or remove the second to the 11th defendants from the proceedings as well as orders that have been obtained by all parties before this court on 15 October 2015. It is immensely pertinent to be reminded that the order granted on 15 October 2015 was granted merely on the basis that a global
F settlement was entered to which all of the second to 11th defendants played a crucial and salient part of. The global settlement and the order would not have culminated if not for the crucial involvement of the second to 11th defendants. Even considering the sheer gravity of the second to 11th defendants' involvement in the matter, the plaintiffs still sought for an order
G that the second to 11th defendants to cease to be parties to the proceeding and have the names of the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and 11th defendants appearing on the intitulement of the originating summons be deleted.

[19] It is pertinent to note that the plaintiffs' application in encl. 71 is not
H simply intended for prospective or consequential orders post-determination of the proceedings. But, the plaintiffs' application in encl. 71 was intended to have a retrospective effect in which the plaintiffs intend to remove the involvement or the parties' presence in the intitulement from the very beginning as though the second to 11th defendants were never part of the
I proceedings. It is akin to erasing records and distorting the historical integrity of the entire proceedings.

[20] The plaintiffs claim that their application was made pursuant to O. 15 r. 6(2)(a) of the Rules of Court 2012.

[21] Enclosure 71 had been served on the second to 11th defendants, however the second to 11th defendants takes a stance that they have no objections to the plaintiffs' application so long that there will be no admission on their part on the contents of encl. 72 and there should be no order as to costs against them.

[22] Even though the application was not objected by the second to 11th defendants, this court had directed the plaintiffs to submit the merits of the application.

[23] Upon consideration of the submission and arguments of counsel for the plaintiffs, this court is of the view that the plaintiffs' application is not only an ill-conceived and improper application but also an abuse of the process of the court. Hence, this court had dismissed the plaintiffs' application in encl. 71.

[24] Dissatisfied with the dismissal of their application, the plaintiffs now filed a notice of appeal appealing against the said dismissal of their encl. 71.

The Plaintiffs' Argument

[25] The plaintiffs had filed their encl. 71 purportedly relying on the provision of O. 15 r. 6(2)(a) of the Rules of Court 2012 (ROC 2012).

[26] Order 15 r. 6(2)(a) of the ROC 2012 reads as follows:

> Order 15 rule 6(2)(a):
>
> (2) Subject to this rule, at any stage of the proceedings in any cause or matter, the Court may on such terms as it thinks just and either of its own motion or on application:
>
> (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be proper or necessary party, to cease to be a party.

[27] Counsel for the plaintiffs had argued that this court has jurisdiction to hear their application and is not *functus officio*.

[28] It was contended by counsel for the plaintiffs that in respect of an order of mental disorder ("the order"), this court has the jurisdiction to hear any application even though the order has been granted and perfected. Counsel for the plaintiffs had submitted the following arguments:

(i) paragraph 2 of the mental disorder order itself acknowledges that this court has jurisdiction to hear the historical issue post the mental disorder order.

(ii) there are various provisions in the Mental Health Act 2001 expressly provide for applications to be made and heard post the mental disorder order, namely; s. 63, s. 65 and s. 74.

(iii) allegedly there are case laws whereby subsequent to the mental disorder order, the High Court granted leave for proposed interveners to intervene as parties pursuant to O. 15 r. 6(2)(b) of the Rules of Court, 2012. Counsel for the plaintiffs had referred to a High Court case of *Ling Towi Sing & Ors v. Dato' Ng Kong Yeam; Kay Swee Pin & Anor (Proposed Interveners)* [2017] 1 CLJ 221. A case which this court respectfully distinguishes as the plaintiffs' application shares very little to no significance at all with the facts and issues dealt with in *Ling Towi*.

(iv) the phrase "[a] any stage of the proceedings" under O. 15 r. 6(2)(a) of the ROC 2012 covers post mental disorder order. The phrase "at any stage of the proceedings" which also appears in O. 20 r. 5(1) of the Rules of Court 2012 has been construed by the English Court of Appeal to include after final judgment. Counsel for the plaintiffs had referred to an English Court of Appeal case of *Singh v. Atombrook* [1989] 1 WLR 810.

[29] Apart from the arguments above, the plaintiffs' counsel had also argued that in the present case, the second to 11th defendants' interests in this action have ceased to exist as the defendants themselves had informed this court that they no longer wish to pursue with the historical issue and they have no objection to the plaintiffs' encl. 71.

The Court's Decision

[30] It is this court's finding and view that the plaintiffs' application to have the second to 11th defendants removed from the proceedings initiated by the plaintiffs in 2015 although the second to the 11th defendants have been crucial parties to the proceedings since just two months after the filing of the matter is indeed a baseless application, devoid of merit and an abuse of process of this court. The grounds that this court views as such are deliberated below.

[31] The plaintiffs had filed the originating summons (encl. 1) in reliance to the provisions of the MHA 2001. *Vide* encl. 1, the plaintiffs had applied to this court for a declaration that their father KLS, is a mentally disordered person under s. 51 of the MHA 2001.

[32] Section 51 of the MHA 2001 defines mentally disordered person as:

> any person found by due course of law to be mentally disordered and incapable of managing himself and his affairs.

[33] Meanwhile, "mental disorder" is defined under s. 2 of the MHA 2001 as:

> any mental illness, arrested or incomplete development of the mind, psychiatric disorder or any other disorder or disability of the mind however acquired; and "mentally disordered" shall be construed accordingly.

[34] At the time of the filing of encl. 1, the plaintiffs are fully aware that the estate of KLS comprises of monies in bank accounts, and shares held in private limited companies ("shares"). The plaintiffs are also verily aware that the estate of KLS is entangled in numerous legal suits ("suits") in which KLS had been involved with in his personal capacity which were commenced in 2013 and 2014. The numerous legal proceedings KLS was involved either in his personal capacity or his companies or his family's companies or his companies' shares are as follows:

(i) suits by companies that KLS holds/previously held management positions ("Koo Family Companies") against defendants and others for allegations of breaches of fiduciary duties and/or conspiracy to defraud eg:

  (a) allegations that KLS set up companies owned by himself and/or his family members ("KLS Family Companies") in competition with Koo Family Companies;

  (b) allegations that KLS hived off business of KLS Family Companies to the detriment of Koo Family Companies;

  (c) allegations that KLS had caused Koo Family Companies to enter into contracts which unduly benefits KLS Family Companies;

  All of which relate to events occurring since the year 2005.

(ii) Suit against KLS and others for *inter alia* declarations that past events (such as transfer of shares in year 2001, extraordinary general meeting held in year 2004, resolutions passed since year 2004) are invalid and for the register of members of the company to be rectified accordingly.

(iii) Suit against KLS and others for ownership of shares in a company, which relates to events since 1989.

(iv) Suit commenced against the defendant for oppression of shareholders and suits initiated by the defendant for the winding up of a company, which relates to events since the 1940s.

(v) Suit commenced by the defendant against the current management of the Koo Family Companies for refusing to approve his request for the transfer of shares held in his name to third parties.

(vi) Suit commenced by the KLS Family Companies against Koo Family Companies for breach of contract ie, for failure to pay rent; and defended on the grounds of allegations of breaches of fiduciary duties by the defendant.

[35] This court must also mention that throughout the years of 2013 and 2014, KLS's medical reports by Dr Subash did not suggest any impairment in KLS's ability to make informed decisions. During that time, the plaintiffs

had claimed that they were only assisting KLS in giving instructions to his solicitors in relation to the shares and legal suits, as they were of the view that their father, KLS was capable of managing affairs in relation thereto.

[36] Then come the two medical reports by Dr Subash Kumar Pillai in 2015, namely the medical reports respectively dated 15 April 2015 and dated 5 May 2015. In these two reports, Dr Subash had found that KLS's mental condition was as follows:

(i) KLS's current cognitive functions will likely have an impact with him making informed decisions as he may not be able to remember what he had decided earlier.

(ii) he suffers from "dementia", which is described as "a broad category of brain diseases that cause a long term and often gradual decrease in the ability to think and remember";

(iii) he could pose a danger to himself as he is "physically frail and also has dementia" and is at "higher risks for falls and getting lost",

(iv) he is not able to "make any informed decisions regarding his shares in his companies"

(v) he is not able to "give proper instructions to his solicitors with the regards to the legal proceedings and a compromise".

[37] The plaintiffs, faced with medical reports which found KLS is unable to make informed decision in respect of his estate, had come before this court with a certificate of urgency seeking for an order to declare that their father is mentally disordered and thus incapable of managing himself and his affairs and upon such declaration, a committee of the person/his estate be appointed.

[38] When the plaintiffs commenced the proceedings, the second to the 11th defendants who claimed that they will be affected by such order had intervened into the proceedings and were made defendants.

[39] Nonetheless, before this court grants a declaration regarding KLS's mental condition, the parties have informed this court that all parties, particularly all second to the 11th defendants have reached a global settlement (GSA) and consequently parties have entered and recorded a consent judgment with terms as recorded in encl. 56.

[40] It is pertinent to highlight here that the consent judgment entered between the plaintiffs and defendants not only records the agreement of parties on the terms as stipulated in the GSA, but even goes to cover the parties' agreement regarding the shares of numerous companies between the plaintiffs and defendants.

[41] Consequentially from the recording of the said consent judgment on 15 October 2015, the second to 11th defendants have proceeded to inform this court that they have no objections against the plaintiffs' application in encl. 1.

[42] Considering the non-objection from the second to 11th defendants, this court proceeded to critically and duly determine the joint report which was furnished into court and based on the said joint report, this court has made a finding that an inquiry is no longer required to be conducted to ascertain KLS's mental condition as the said joint report is sufficient and comprehensive enough for this court to determine KLS's mental condition.

[43] Upon close scrutiny of the joint report on KLS, this court is satisfied and declares that KLS is a mentally disordered person who is unable to manage himself and/or his affairs. With the granting of this declaration, the consequential order was the appointment of a committee to manage KLS's affairs and matters.

[44] To this court, the declaration granted regarding KLS's mental condition is a matter that is purely substantive in encl. 1, in which deems the proceedings of encl. 1 fully disposed of, determined upon merits, and ended. This court has duly issued a final order with consequential directions in respect of KLS's mental state or condition.

[45] Enclosure 71 was filed only after some 20 months from the declaratory order declaring KLS is mentally disordered person was obtained by the plaintiffs. The filing of encl. 71 by the plaintiffs is obviously without merit, is baseless and constitutes an abuse process of court.

[46] When this court had declared that KLS is a mentally disordered person, this court had handed down a final order, hence the proceedings had concluded and there is no longer any live proceedings for the plaintiffs return before to this court for an order to extricate, delete or remove the names of the second to 11th defendants from the proceedings. In other words, this court is *functus officio* upon granting an order in terms of encl. 1. This court cannot simply add, remove or erase the involvement of parties who have played a crucial role in a proceeding, as though they were never part of the proceeding.

[47] The application or operation of O. 15 r. 6(2)(a) of the ROC 2012 by the plaintiffs in their application is plainly misconceived. This court has maintained since the beginning that the matter or substantive proceedings (the declaration of KLS's mental condition) has already been determined or disposed of by this court of which all the second to 11th defendants played salient and pertinent role in.

[48] The order and the GSA had culminated only with the direct involvement of the second to 11th defendants. The declaration of KLS as a mentally disordered person and the appointment of a committee to manage KLS's affairs was a final order, in view of the proceedings initiated by the plaintiffs.

[49] Surely the Parliament would never intend to promulgate a law that allows erasure of records and manipulation of historical integrity. Though the provision may allow the addition or subtraction of parties supposedly at

any time of the proceedings, clearly the provision would never promote erasure of records and distortion of historical integrity of proceedings. The operability of the provision only extends to further prospective determinations or consequential matters, and certainly does not cover retrospective erasure of involvements and records.

[50] In the present case, the proceedings have already come to its end, fully determined on merits. There are no longer any proceedings before this court under the enclosures previously filed in court to allow the plaintiffs to simply erase and alter the involvements of parties and the historical integrity of the proceedings. As and when, and at all material times that the second to 11th defendants were parties, the plaintiffs cannot abuse the provision to delete or erase the second to 11th defendants' involvement in the proceedings. The second to 11th defendants were crucial and inseparable from the determination of the proceedings. All parties have reaped benefits from the proceedings and parties cannot at their own whim and fancy erase, hide, or distort their involvement in the proceedings.

[51] Thereto, upon such stance of this court, O. 15 r. 6(2)(a) of the ROC 2012 certainly cannot be relied upon by the plaintiffs.

[52] In this regard, this court refers to the decision of Jeffrey Tan J (as he then was) in the case of *Nite Beauty Industries Sdn Bhd & Anor v. Bayer (Malaysia) Sdn Bhd* [2000] 6 CLJ 151; [2000] 3 MLJ 314 in dismissing an application to intervene in which the court there has held as follows at p. 155 (CLJ); p. 314 (MLJ):

> (3) Although O. 15 r. 6(2) states that such an application could be made at any stage of the proceedings, its scope should be limited to an application made before final judgment had been entered and not after because the proceedings would then have come to an end. Thus, the would-be intervener, who will be directly affected, either legally or financially, by any order which may be made in the action, must intervene before that order is perfected and whilst the court is still not *functus officio*. **All proceedings came to an end upon the approval of the scheme of arrangement and compromise on 14 May 1999, thus the court no longer has any jurisdiction to make any order under O. 15 r. 6(2) (see pp 318H-319B, E, I**). (emphasis added)

[53] The principle enunciated in *Nite Beauty Industries Sdn Bhd* was affirmed in the Federal Court's decision of *Hong Leong Bank Berhad v. Staghorn Sdn Bhd & Other Appeals* [2008] 2 CLJ 121; [2008] 2 MLJ 622.

[54] In *Hong Leong Bank Berhad v. Staghorn Sdn Bhd & Other Appeals* [2008] 2 CLJ 121; [2008] 2 MLJ 622, the Federal Court had this to say in paras. 30-59 (CLJ); paras. 27-55 (MLJ):

> [30] Thus, we see that our courts have been every consistent regarding the scope of the proceedings …' necessarily mean that there is a proceeding pending. Once the judgment is entered, the proceeding has come to an end. Furthermore, O. 15 is concerned with the very early stage

> of proceeding, to have all the necessary parties in before the trial begins. Thus, r. 8 provides that, when the order under r. 6 has been made, the plaintiff must accordingly amend the writ and serve the amended writ on the new defendant and upon service the new defendant is given the right to enter an appearance. All these happen before the trial.
>
> ...
>
> [59] Secondly, an application for leave to intervene in order to set aside an order for sale by a party not already a party to the proceedings must be made under O. 15 r. 6 of the RHC. The application may be made 'at any stage of the proceedings' meaning before judgment, otherwise the proceedings have concluded and there is no longer a proceeding in existence for the party to intervene in. The judge has also become *functus officio*. Even then, the application must be made promptly. Order 15 r. 6 of the RHC applied to all civil proceedings whether commenced by a writ, motion or summons etc.

(See also the Federal Court's decision in *Hock Hua Bank Bhd v. Sahari Murid* [1980] 1 LNS 92; [1981] 1 MLJ 143 and *Chew Hon Keong v. Betterproducts Industries Sdn Bhd & Ors* [2013] 7 MLJ 196)

[55] This court reiterates that, in the present case, when the s. 56 of the MHA 2001's order was granted, the parties before this court includes both the plaintiffs and the second to 11th defendants. This record and history of involvement at the material time cannot and shall not be erased or altered. All the parties here had obtained all the necessary and required orders pertaining KLS's mental condition and all issues therein had been resolved and decided.

[56] Clearly, the MHA proceedings regarding to KLS's mental condition or mental state *vide* encl. 1 herein has come to an end. A final order has been pronounced by this court and the order had been drawn up, perfected and sealed with all involved parties properly and appropriately recorded. As such, this court with the greatest respect is *functus officio* and is in no position or jurisdiction to undo or distort whatever involvement of parties had in the past.

[57] This court is minded that the plaintiffs' counsel had attempted to defend its application in reliance to provisions of ss. 63, 65 and 74 of the MHA 2001.

[58] These provisions are reproduced below:

> (i) section 63
>
> The Court may, if it appears to the Court to be just or for the benefit of the mentally disordered person, order that any property, movable or immovable, and whether in possession, reversion, remainder, contingency or expectancy, be sold or charged or otherwise disposed of as seem most expedient for the purpose of raising money to be applied for any of the following purposes:

A

(a) the payment of his debts, including any debt or expenditure incurred for his maintenance or for his benefit;

(b) the discharge of any encumbrance on his estate;

(c) the payment of or provision for the expenses of his future maintenance and the maintenance of his family, including the

B

expenses of his removal to any place in or outside Malaysia and all related expenses;

(d) the payment of the costs of any proceedings under this Act and of any costs incurred by order or under the authority of the Court.

C

(ii) section 65

Where a person who has contracted to sell or dispose of his estate or any part of his estate subsequently becomes mentally disordered, the Court may, if the contract is such as the Court deems ought to be performed, direct the committee of the estate of the mentally disordered person to execute such conveyances and to do such other acts in fulfillment of the

D

contract as it deems proper.

(iii) section 74

(1) Where a person has been found to be incapable of managing himself and his affairs due to his mental disorder and it is subsequently shown to the Court:

E

(a) on the application of that person;

(b) on the application of a person acting on his behalf; or

(c) on the information of any other person,

F

that there is reason to believe that such incapability has ceased, the Court may make an order for an inquiry to determine whether the person is now capable of managing himself and his affairs.

(2) The inquiry under subsection (1) shall be conducted in the same manner as that prescribed for an inquiry into whether a person alleged to be mentally disordered is incapable of managing himself and his affairs.

G

(3) Where upon an inquiry under this section the Court finds that the person is now capable of managing himself and his affairs the Court shall order all proceedings in the matter to cease or to be set aside on such terms and conditions as it deems proper.

H

[59] With utmost respect, the plaintiffs' counsel's reading of these provisions is erroneous and ill-conceived. Indeed the provisions allow for further and consequential orders from or stemming from an earlier order determining the mental state or condition of a person. However, none of these provisions allows a retrospective order to alter, delete, erase, and

I

distort earlier records and direction or orders made by the court. It is obviously plain to see that these provisions were intended to have a consequential and a prospective effect and certainly not a retrospective effect:

(i) Section 63 provides for sale of a mentally disordered person's assets AFTER a person is determined to be mentally disordered;

(ii) Section 65 provides enforcement of contracts entered by a mentally disordered person at the time he is of sound mind AFTER a person is determined to be mentally disordered; and

(iii) Section 73 provides for prospective discharge of a previous order declaring mental disorder AFTER a person is determined to be mentally disordered.

[60] However, what the plaintiffs intend to erase, manipulate and unduly distort here is the undeniable saliency, and involvement of the second to 11th defendants in the proceedings BEFORE KLS is determined to be mentally disordered. Clearly what is applied for by the plaintiffs is the exact and direct opposite of what these provisions provided for.

[61] None of these provisions provide for retrospective erasure of court records and distortion of the integrity of a proceeding.

[62] The plaintiffs' application to erase the names of the second to 11th defendants from all proceedings at all material times regarding KLS's mental condition is NOT a consequential order but instead is an unlawful attempt to erase, or distort the position and involvement of the second to 11th defendants from the proceedings in which they played an integral to since the beginning of the proceedings as litigants. It would be unbecoming of the law, if this court were to set a precedent to allow parties to simply erase and alter their litigious involvement in a litigation proceeding after the litigation proceeding has been determined.

[63] To this court's mind, upon the declaration in the order regarding KLS's mental state, all parties inclusive the plaintiffs and the second to 11th defendants are undeniably parties involved and affected from the said declaration. Even more so, when the consequence of the declaration entails that all parties stand to benefit from the order. A party cannot reap benefits or face detriment from its litigation and subsequently simply erase records and pretend as though the litigation and involvement in litigation never occurred.

[64] If this court were to allow this application by the plaintiffs, it is akin to this court allowing parties to, at their whim and fancy intervene into any proceedings and upon disposal of the proceeding, upon reaping benefits from the proceedings, suddenly and abruptly attempt to erase their involvement in the proceedings.

[65] This court finds and maintains that the plaintiffs' application here is incredulous, ridiculous and appropriately should be dismissed. Adding further detriment to the application, the plaintiffs never furnished any real and substantive justification to the undue erasure and distortion of history and court records regarding the involvement of the second to 11th

defendants. All that was furnished to court was that there were no objections from the second to 11th defendants. This court stresses that the judicial responsibility of this court does not simply extend to allowing and granting directions that parties agree to. This court must exercise its judicial discretion with due care and consideration to established principles of law. The underlying reasons and motive behind this bewildering application are only known to the plaintiffs.

[66] The plaintiffs purportedly also attempted to justify the application on the notion that the second to 11th defendants' interests have ceased to exist when the defendants are no longer interested to pursue with the historical issues of the onset of KLS's mental degradation. Notwithstanding the notion that the second to 11th defendants' interests have ceased to exist, the diminishment of interests does not erase or diminish the fact of involvement in a proceeding. Interest may cease to exist, but the history and record of factual involvement shall always remain. It is beyond this court's or any court's jurisdiction for that matter, to alter history and records.

[67] Even if this court were to unduly stretch the law and consider the plaintiffs' ill-conceived contentions, the historical issue on the onset of KLS's mental state also offers no solace and support to the plaintiffs' application.

[68] This is particularly so as even the historical issue raised had already been fully disposed and determined with the integral involvement of the second to 11th defendants. This is obviously stated in the plaintiffs' own letter to this court (Cheah Teh & Su letter) dated 8 October 2015. This Cheah Teh & Su letter was presented to this court before to the consent judgment was entered regarding KLS's mental state was recorded on 15 October 2015. Paragraphs 4 and 5 of the Cheah Teh & Su letter reads:

> 4. Lanjutan daripada itu, kami difahamkan bahawa Defendan-Defendan ke-2 hingga ke-11 tidak mempunyai bantahan terhadap prayer-prayer Lampiran 1 untuk deklarasi bahawa Defendan Pertama adalah pada masa kini bercelaru mental dan untuk perlantikan jawatankuasa untuk estet Defendan Pertama.
>
> 5. Berkenaan dengan **isu sejak bila Defendan Pertama bercelaru mental**, pihak-pihak bersetuju untuk menangguhkan penentuan isu tersebut. Sekiranya penyelesaian global tersebut diluluskan oleh Mahkamah dan dilaksanakan sepenuhnya, **isu tersebut tidak perlu diputuskan oleh Mahkamah**. (emphasis added)

[69] The letter itself reads and states that if the said GSA is recorded by this court and enforced fully, the historical issue need not be delved into by this court. Thus, with the advent of the GSA, and the recording of consent judgment, the historical issue is already deemed settled and determined.

[70] This is even more apparent considering that this historical issue has even been integrated and embedded within the GSA courtesy of the integral involvement and agreement of the second to 11th defendants:

> Recitals
>
> A. Lydia, Angela, Charles and Henry are the beneficiaries of the Estate of Koo Ling Ching (KLC) (collectively, KLC Beneficiaries).
>
> 2 Conditions precedent
>
> 2.1 Agreement conditional
>
> (a) This agreement is conditional upon the KLS Family Members applying to the Shah Alam High Court and obtaining the following orders (Application):
>
> (1) declaring KLS a mentally disordered person under the Mental Health Act 2001 (MHA Proceeding);
>
> (2) appointing a committee comprising the KLS (Committee) and
>
> (3) sanctioning KLS' execution of the SSAs and this agreement.
>
> (b) The KLC parties who have intervened in the MHA proceeding hereby agree not to object to KLS Family members' application as aforesaid but reserve the right to challenge the date on which KLS became mentally disordered Subject Always to clause 4.1(b) below.
>
> 4.10 Legal Proceedings
>
> ...
>
> (c) KLC Parties shall take all necessary steps, actions or deeds as may be necessary to inform the Shah Alam High Court in writing that the KLC Parties no longer wish to investigate and/or wish to withdraw its application for a determination as to when KLS became a mentally disordered person;

[71] Therefore, as stated in the Cheah Teh & Su letter, when the GSA and consent judgment was recorded before this court on 15 October 2015 and this court issues the order declaring KLS being mentally disordered, thus, the historical issue regarding the onset of KLS's mental disorder is deemed settled and ceases to be relevant. The plaintiffs cannot now contradict its own stance and attempt to abuse this historical issue to unduly erase the second to 11th defendants' involvement in the proceedings. This court reiterates that all parties inclusive the plaintiffs and the second to the 11th defendants are directly and pertinently involved in, as well as affected by the consent judgment entered and declaratory order granted by this court. In fact, all parties have all obtained reaped benefits from the said orders. Thus, by no just means at all should this court allow the undue erasure and distortion of records in having the names of parties be erased as though they were never

involved in a proceeding which has already been fully determined and disposed of. Clearly the plaintiffs' application here is a blatant abuse of the process of the court.

[72] For the sake of completeness, it is apparent that the decision in *Ling Towi Sing & Ors v. Dato' Ng Kong Yeam; Kay Swee Pin & Anor (Proposed Interveners)* [2017] 1 CLJ 221 relied upon the plaintiffs dis nothing to support their contention. Indeed, in *Ling Towi*, the court there has allowed an intervener's application under O. 15 r. 6(2)(a) of the ROC 2012 subsequent to an order declaring mental disorder of a person. But it is obvious to see that the nature of an application to intervene (which is an addition of undisposed interest/interest not yet determined) and a retrospective and erroneous application to erase, and distort previous records of proceeding (while reaping benefits of interests fully determined and disposed of) is utterly and thoroughly different. The case of *Ling Towi* lends no aid or relevance at all to the plaintiffs' case.

[73] In view of the aforementioned findings and deliberations, this court duly and appropriately dismiss the plaintiffs' application in encl. 71.